

From: Jones, Enesta [Jones.Enesta@epa.gov]
Sent: 3/20/2020 8:02:03 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips, 3/20/20

Daily News Clips
March 20, 2020

Administration

Bloomberg Environment: Governors, Mayors Urge Trump to Pause Regulatory Comment Clock

<https://news.bloombergenvironment.com/environment-and-energy/governors-mayors-urge-trump-to-pause-regulatory-comment-clock>

E&E: Pandemic 'totally predictable.' How Trump dismissed warnings

<https://www.eenews.net/climatewire/stories/1062649155/search?keyword=EPA>

Agency

POLITICO's Energy Regulation Watch: Regs in the time of coronavirus

<https://subscriber.politicopro.com/newsletter/2020/03/regs-in-the-time-of-coronavirus-786268>

POLITICO Pro: Green, health groups fear pandemic eases path for Trump EPA rollbacks

<https://subscriber.politicopro.com/article/2020/03/green-health-groups-fear-pandemic-eases-path-for-trump-epa-rollbacks-1897781>

Chemicals

Bloomberg Environment: EPA's Glyphosate Approval Draws Challenge from Green Groups

<https://news.bloombergenvironment.com/environment-and-energy/epas-glyphosate-approval-draws-challenge-from-green-groups>

Congress

Bloomberg Environment: Senate Panel Calls for Written Testimony on Climate Pollutant

<https://news.bloombergenvironment.com/environment-and-energy/senate-panel-calls-for-written-testimony-on-climate-pollutant>

Coronavirus

Bloomberg Environment: EPA Working With Companies to ID New Coronavirus Disinfectants

<https://news.bloombergenvironment.com/environment-and-energy/epa-working-with-companies-to-id-new-coronavirus-disinfectants>

Bloomberg Environment: Companies Asking EPA for 'Act of God' Extensions Due to Virus

<https://news.bloombergenvironment.com/environment-and-energy/companies-asking-epa-for-act-of-god-extensions-due-to-virus>

CNN: Scammers use robocalls to falsely offer free coronavirus test kits and low-priced health insurance

<https://www.cnn.com/2020/03/20/politics/kfile-robocalls-coronavirus-scammers/index.html>

E&E: Pandemic could stall fight over Trump power plant rule

<https://www.eenews.net/greenwire/stories/1062655149/search?keyword=EPA>

E&E: Groups: Make airline help contingent on enviro protections

<https://www.eenews.net/greenwire/stories/1062655635/search?keyword=EPA>

E&E: Ethanol feeds booming production of hand sanitizer

<https://www.eenews.net/greenwire/stories/1062655513/search?keyword=EPA>

E&E: Wheeler urges telework as 2nd staffer tests positive

<https://www.eenews.net/greenwire/stories/1062655813/search?keyword=EPA>

Law360: Enviro Attorneys Pivot To Clients' Coronavirus Concerns

<https://www.law360.com/articles/1254969>

Talk Radio 1210 WPHT: EP Shortens Approval Process for Disinfectants

<https://1210wpht.radio.com/media/audio-channel/epa-shortens-approval-process-for-disinfectants>

The Hill: Second EPA employee tests positive for coronavirus

<https://thehill.com/policy/energy-environment/488523-second-epa-employee-tests-positive-for-coronavirus>

The Hill: EPA to expedite reviews of products claiming to fight coronavirus

<https://thehill.com/policy/healthcare/public-global-health/488650-epa-to-expedite-reviews-of-products-claiming-to-fight-coronavirus>

Washington Examiner: EPA speeds OK of 300 coronavirus disinfectants

<https://www.washingtonexaminer.com/washington-secrets/epa-speeds-ok-of-300-coronavirus-disinfectants>

Rulemaking

E&E: State AGs urge halt to 'secret science' rulemaking

<https://www.eenews.net/greenwire/stories/1062655787/search?keyword=EPA>

+++++

Administration

Bloomberg Environment

Governors, Mayors Urge Trump to Pause Regulatory Comment Clock

<https://news.bloombergenvironment.com/environment-and-energy/governors-mayors-urge-trump-to-pause-regulatory-comment-clock>

BY CHRIS MARR

More than 1,000 proposed federal rules and regulatory actions are due to finish their public comment periods while stakeholders are distracted by the COVID-19 pandemic, the National Governors Association and others wrote to President Donald Trump.

Nine state and local government associations asked Trump to pause the comment periods for all active federal rulemaking and notices, according to their letter dated Friday.

The pandemic's "extreme impact on normal working and living conditions will impair the ability of not only state and local officials, but also the general public, issue experts and others to provide thoughtful and meaningful participation and involvement in potential federal government actions that directly affect millions of people," the groups wrote.

Signing on to the letter along with the governors association were the U.S. Conference of Mayors; National Conference of State Legislatures; National League of Cities; National Association of Counties; Government Finance Officers Association; Council of State Governments; International City/County Management Association; and National Association of State Auditors, Comptrollers, and Treasurers.

The website for commenting on federal proposals, regulations.gov, shows nearly 700 comment periods due to close within 30 days and more than 1,000 that will close in 90 days, according to the letter.

The letter urged Trump to "extend agency comment periods for a reasonable period of time."

E&E

Pandemic 'totally predictable.' How Trump dismissed warnings

<https://www.eenews.net/climatewire/stories/1062649155/search?keyword=EPA>

By Jean Chemnick

The Trump administration has a record of labeling warnings about national security risks as "alarmist." Now, as the consequences of White House inaction on the new coronavirus become clear, many experts say the administration's habit of ignoring the threat of climate change could be more devastating.

On both climate change and pandemics, the Trump administration has been briefed often, sometimes by the same agencies.

Both threats have appeared in three consecutive Worldwide Threat Assessments published since President Trump took office.

"We assess that the United States and the world will remain vulnerable to the next flu pandemic or largescale outbreak of a contagious disease that could lead to massive rates of death and disability, severely affect the world economy, strain international resources, and increase calls on the United States for support," stated the report by Trump's former National Intelligence Director Dan Coats.

It was published in January 2019 — about a year before the first coronavirus cases appeared in the U.S.

Lisa Monaco, President Obama's national security assistant, ran a transition exercise on pandemics for Trump's team a week before Trump was inaugurated. It offered lessons from the 2014 Ebola crisis and other outbreaks.

But despite these and other warnings from agencies like the Centers for Disease Control and Prevention and academic research institutions like Johns Hopkins Center for Health Security, Trump disbanded a White House office that would have coordinated the federal response to a pandemic.

He repeatedly proposed deep budget cuts for the agencies that are now on the front lines of the COVID-19 pandemic — a 12% reduction for the Department of Health and Human Services in fiscal 2020 and a 10% cut for the CDC for fiscal 2020.

As crisis loomed, Trump discouraged his public health advisers from offering him pessimistic projections of the risk of the virus, *Politico* reported. Meanwhile, he suggested that early U.S. cases would dwindle and finally disappear "like a miracle" as spring set in.

That's not what happened. In March, as cases proliferated, his message changed. He said the pandemic was an "unforeseen problem" that "nobody expected."

But public health and national security experts say that's not true.

"It's totally predictable," said Christine Parthemore, who advised the Defense Department on biological threats under Obama and now heads the Council on Strategic Risks.

"Our government broadly, writ large, the folks who do this work are constantly in tune with what the scale of the threat could be," she said.

To the public health community, a pandemic like COVID-19 was not only plausible, but likely.

"Our nation's public health and health care communities have been planning for these disasters in earnest since post-9/11 and the anthrax attacks," said Suzet McKinney, CEO of the Illinois Medical District. She said a pandemic could be expected every 50 to 60 years.

Even as he fields criticism for the late start that resulted in a lack of testing capacity and a missed chance to contain the illness, Trump remains resistant to bad news.

After Treasury Secretary Steven Mnuchin said Wednesday that unemployment could reach 20% due to the outbreak, Trump waved the prediction away.

"That's an absolute, total worst-case scenario," Trump told reporters at a White House briefing. "But no, we don't look at that at all."

Remote climate risks dismissed

Trump's dismissal of worst-case scenarios also applies to climate change. The chief way agencies inform the president and the public about global warming is through the National Climate Assessment. It's published every four years with input from experts at 13 federal agencies.

The 2018 edition grabbed headlines for predicting that warming could cause the U.S. economy to shrink by 10% by the close of this century and lead to deaths from heat-related illnesses, viruses and respiratory disease.

The report came as agencies like EPA were in the process of rolling back emissions rules and plans for adapting to climate change. Andrew Wheeler, who was then EPA's acting administrator, chose his line of defense early.

"I think a lot of the criticism that you're seeing from the Trump administration on the report is the emphasis from the media on the 'worst-case' scenario," Wheeler said at a *Washington Post* event held days after the report's release.

Since then, Wheeler has continued to decry the use of "worst-case" and "extreme" scenarios in scientific assessments and to blame them for feeding critical media accounts and alarming the public.

He surprised environment ministers from the Group of Seven countries by bringing the issue up at a summit in Metz, France, last year, where the agenda had been carefully scrubbed of climate change for the benefit of the U.S.

He has continued to pound it at congressional hearings and press interviews, including to a Brazilian newspaper during a trip there last month. And he promised that as work gets

underway on the next National Climate Assessment, it will include moderated climate modeling assumptions that will deliver tamer — or, in his view, more realistic — predictions of climate outcomes.

Federal climate modelers are scheduled to meet in the coming month to discuss inputs for the 2022 edition of the climate assessment.

To some experts, the coronavirus shows exactly why the government should be preparing for worst-case scenarios of climate change.

On Sunday night, as stock futures dropped and many Americans settled in for a week of social isolation, NASA climate modeler Gavin Schmidt commented on Twitter: "This probably doesn't need to be said, but planning for low probability, high impact, worst case scenarios is looking pretty smart right now."

"When you're planning for what can happen, you have to plan for all plausible eventualities and even ones that aren't so plausible," Schmidt, the director of the NASA Goddard Institute for Space Studies, told E&E News.

When Wheeler talks about "extreme" or "worst-case" climate scenarios, he means Representative Concentration Pathway 8.5, or RCP 8.5, which broadly tracks with 5 degrees Celsius of warming, or 9 degrees Fahrenheit.

His argument rests on a debate within the climate modeling community over whether it's still a business-as-usual scenario — as it was in 2007, when it was first built — or whether national mitigation programs and market shifts away from coal-fired power have rendered it overly pessimistic.

'Bad luck'? It could happen

There's evidence that the world is no longer on track to see 5 C of warming, at least by the end of this century.

A paper in *Nature* in January argued that RCP 8.5 has gone from providing a snapshot of the world's likely climate trajectory to being a warning of what could happen if human emissions veer dangerously upward or if natural feedback loops or climate sensitivity exceed what scientists currently predict.

"There's no path that is a default," said Schmidt. "Any path that we make is going to be the sum total of many, many decisions on all sorts of levels."

Economic patterns could change, he said, or a factor that scientists haven't accounted for — like higher-than-expected rates of permafrost melt — could supersize atmospheric greenhouse gas concentrations. That could make RCP 8.5 a reality.

"If we could end up there through a combination of bad policies and bad luck, then we need to be prepared," Schmidt said.

Zeke Hausfather, a researcher at the University of California, Berkeley, who co-authored the *Nature* paper, said climate modelers should keep RCP 8.5 in their "back pocket."

"Sometimes there are black swan events that nobody really predicted that can change things a lot," he said.

Being aware of low-probability, high-risk scenarios can aid planning, Schmidt said. For example, if 1 meter of sea-level rise is expected but 2 meters is possible, a planning authority would be well-served to consider building a sea wall 2 meters high to ensure its investment isn't wasted.

Peter Frumhoff, director of science and policy at the Union of Concerned Scientists, called Wheeler's obsession with "extreme scenarios" and "worst-case scenarios" a "red herring."

"Even planning for high-probability, high-impact, medium-case scenarios is looking pretty good right now," said Frumhoff. "And we're not doing that, either."

Medium scenarios are still bad

COVID-19 was not a worst-case scenario. Report after report warned that something like the current outbreak was predictable, if not likely.

And while climate modeling experts are reassessing the likelihood that warming this century will exceed 5 C, there's no debate that the world remains on track to see more than 3 C of warming.

And that could be damaging enough.

The same 2018 assessment Wheeler decries for its use of "extreme scenarios" actually uses three more moderate scenarios to show the possible outcomes of different atmospheric concentrations of greenhouse gases, leading to different degrees of warming.

The report notes that under an RCP 8.5 scenario — which is associated with 20 to 38 inches of sea-level rise — "many coastal communities will be transformed by the end of the century."

But under RCP 4.5 and RCP 2.6, milder scenarios that assume countries will do more to address warming than they committed to do, the report says, "Many individuals and communities will suffer financial impacts as chronic high tide leads to higher costs and lower property values."

Instead of planning for those outcomes, the White House has proposed barring federal agencies from considering the effects of climate change when it reviews projects and decisions under the National Environmental Policy Act.

Wheeler and his predecessor, Scott Pruitt, have presided over the rollback or significant weakening of EPA climate rules for power plants, vehicle emissions, and oil and gas methane.

EPA officials have said the task force responsible for setting assumptions for the last National Climate Assessment was directed by Obama political appointees, who, they say, were concerned with making the effects of climate change look as dire as possible to justify regulation. But Joe Goffman, EPA's top lawyer on air and climate under Obama, said it was run by career staff.

He saw Wheeler's suggestion that the Trump administration would change criteria for the next assessment report as evidence of political tampering.

"What Wheeler is asking for is actually a planning process that would willfully blind the decisionmaker to the possibility of a worst-case scenario, which by definition fouls the decisionmaking process," said Goffman.

The White House's rosy view of America's vulnerability to pandemics is coming into focus.

McKinney, of the Illinois Medical District, said states remain dependent on the federal government to coordinate supply lines for masks and other protective clothing for health care workers, ventilators for the seriously ill, and even for food and fuel when supply chains are disrupted.

Trump on Monday told governors they'd have to secure their own ventilators.

Aaron Bernstein, a pediatrician who heads the Center for Climate, Health and the Global Environment at Harvard University, said federal leaders should cope with genuine uncertainties about public health or climate change threats by weighing the consequences of action against those of inaction.

"With climate change it's really easy," he said. "Inaction is by far the greatest risk."

Agency

POLITICO's Energy Regulation Watch: Regs in the time of coronavirus

<https://subscriber.politicopro.com/newsletter/2020/03/regs-in-the-time-of-coronavirus-786268>

By Alex Guillen

With help from Gavin Bade and Eric Wolff

REGS IN THE TIME OF CORONAVIRUS: Environmental groups and public health advocates are raising concerns that disruptions posed by the efforts to combat the coronavirus pandemic are giving the Trump administration an opportunity to swiftly and quietly finalize a series of controversial deregulations, Annie Snider reports today. As the growing pandemic consumes attention in Washington and beyond, the EPA is showing no signs of slowing down its work on regulations that it has been scrambling to finalize by mid-May, a rough deadline that's designed to prevent Democrats from easily overturning them if they win the White House and Congress in November.

Local governments call for pause: Groups representing states, cities and counties today asked President Donald Trump to suspend public comment periods during the pandemic. In a letter, the groups said state and local officials are "vital" to federal policymaking, but that those officials are unable to provide input during the outbreak, Annie reports.

FERCIN' 9 TO 5: FERC will extend filing deadlines and consider loosening the enforcement of some industry regulations in response to the coronavirus outbreak, Chairman Neil Chatterjee said during a teleconference Thursday. But the agency will not pause its own regulatory work as one member requested, Gavin Bade reports.

COURTROOM DELAYS: The coronavirus has led to widespread court-related delays. The D.C. Circuit has delayed a much-watched *en banc* appeal of the Atlantic Sunrise pipeline case, pushing arguments back from March 31 to April 28, and potentially later. The court has also canceled all upcoming in-person arguments, meaning panels of judges will decide for each case whether to postpone arguments, hold them by teleconference or decide based on the briefs.

Briefing schedules are also starting to see delays. For example, on Thursday night, the blue states and environmental groups challenging EPA's Affordable Clean Energy rule asked for three extra weeks to file their opening briefs, a delay to which the EPA agreed. Workplace closures, especially in California, which has ordered residents to "shelter in place," have hamstrung the complex coordination required between the various challengers, who have to divvy up issues and negotiate a limited word count. Many of the attorneys are working from home with few child care options as well, they said. Pushing the briefing schedule back by 21 days isn't likely to significantly delay the case on its own. The new schedule has last briefs due Aug. 13, still during the D.C. Circuit's normal summer hiatus from oral arguments. (Reg. 2060-AT67)

WELCOME TO ENERGY REGULATION WATCH, your biweekly guide to the world of energy and environmental regulations. Any tips, comments and suggestions? Send them to EnergyRegWatch@politicopro.com, and follow me on Twitter at [@alexcguillen](https://twitter.com/alexcguillen). And don't forget our other helpful online tools, like the [Regulatory Compass](#) and [Document Drawer](#).

EPA Updates

SAB EYES METHANE ROLLBACK, LEAD AND COPPER RULE: EPA's [Science Advisory Board](#) will hold a teleconference on [March 30](#) to be briefed by the agency on two rulemakings, its appeal of methane emissions rules for newly built oil and gas wells ([Reg. 2060-AT90](#)) and the proposed lead and copper rule ([Reg. 2040-AF15](#)). If the SAB moves forward with reviews after those briefings, it will form workgroups and hold another teleconference on [May 11](#) to review those groups' reports.

NO HELP FOR WOOD STOVE INDUSTRY: EPA has [reversed its plan to extend an upcoming deadline](#) for retailers to sell off stocks of dirtier-burning residential wood stoves after the agency said industry could not justify needing more time. The agency in 2018 had proposed giving retailers two extra years before having to switch to selling cleaner-burning wood heaters only, but in last week's final rule reversed that decision after finding the industry could not justify it. ([Reg. 2060-AU00](#))

TSCA — EPA UPDATES REPORTING RULE AHEAD OF 2020 SEASON: EPA has [issued final amendments to the Chemical Data Reporting rule](#) to match up with the 2016 legislative update to the Toxic Substances Control Act. The rule lays out what companies must report to EPA every four years — including this coming summer, the first time since TSCA was amended — so that the agency stays abreast of chemicals in commerce trends. Some of the changes are to bring the rule into alignment with the updated TSCA law, but the rule also includes new reporting exemptions for certain byproducts. The reporting period will begin [June 1](#) and normally goes [through Sept. 30](#), but EPA is giving companies [until Nov. 30](#) to get used to the changes and learn about updated reporting tools. ([Reg. 2070-AK33](#))

More TSCA — SACC dings NMP evaluation: EPA's Science Advisory Committee on Chemicals has released its [peer review of EPA's draft risk evaluation for N-Methylpyrrolidone](#), or NMP. Many committee members expressed concern that EPA limited consideration of environmental releases to “water alone,” as opposed to entering the air or land, a decision it said “provides an inadequate picture of risk from this chemical. The Agency’s current approach of looking narrowly at risks under TSCA regulations leaves over 99% of all environmental releases for NMP unassessed.”

FOURTH GROUP ASKS EPA TO TOSS ENDANGERMENT FINDING: The Center for the Study of Carbon Dioxide and Global Change, a group that rejects mainstream climate science, has filed a petition asking EPA to undo the 2009 "endangerment finding" that underlies many of EPA's key climate regulations on power plants and vehicles. The Center's funders include Murray Energy and the Trump-allied Mercer family. The petition argues that rising greenhouse gases do not represent a current or future threat to public welfare, a view with most climate scientists reject, and that technological advancements enabled by fossil fuel use have improved standards of living. Action from EPA seems unlikely as the agency has been sitting on three similar petitions since the early days of the Trump administration over concerns that undoing the endangerment finding would bring a host of scientific, legal and political problems.

LANDFILL METHANE — EPA FORMALLY CHIDES STATES: EPA has formally declared that 42 states have failed to submit state implementation plans for the 2016 updated landfill methane rule. That, in turn, triggers a new deadline for EPA to issue a federal plan within two years. Just six states have had plans approved, while a handful more are awaiting an EPA decision. According to EPA, seven more states say they plan to submit a plan, while seven more have said they'll just let EPA write a federal plan instead of acting on their own. (Reg. EPA-HQ-OAR-2019-0338)

RTR WATCH: EPA has finalized three more residual risk and technology reviews, or RTRs, for hazardous air pollution standards, this time for asphalt processing and asphalt roofing manufacturing (Reg. 2060-AT34); solvent extraction for vegetable oil production (Reg. 2060-AU17); and boat manufacturing and reinforced plastic composites production (Reg. 2060-AT12). In all three cases, EPA kept numerical emissions limits in place while implementing suites of minor monitoring and reporting requirements.

Around the Agencies

FERC OUTLINES NEW TRANSMISSION INCENTIVE POLICY: FERC on Thursday opened a new rulemaking docket to reform how it sets incentives for building transmission lines. The commission's Notice of Proposed Rulemaking proposes to institute a new cost-benefit analysis for determining the return on equity given to transmission builders, and would double the basis-point ROE incentive for utilities that participate in a wholesale power market regulated by the commission. FERC Chairman Neil Chatterjee said that the new approach will move away from FERC's current "risks and challenges" framework to one that is "based upon benefits to consumers: ensuring reliability and reducing the cost of delivered power by reducing the cost of congestion." FERC first opened the transmission incentive issue with a Notice of Inquiry last March and companies will have 90 days to comment on the NOPR.

CEQ CLOSES NEPA COMMENT PERIOD AFTER NOVEL FOIA FIGHT: A federal judge last week rejected a novel request from the Southern Environmental Law Center to stop the White House Council on Environmental Quality from advancing its proposed changes to the regulations implementing the National Environmental Policy Act. SELC sought to use an ongoing FOIA fight over documents related to the advance notice of public rulemaking to stop CEQ from closing the comment period on its NEPA proposal on March 10. (Reg. 0331-AA03)

But Judge Glen Conrad of the U.S. District Court for Western Virginia concluded that the FOIA law does not let courts stop agencies from closing a comment period, “even if that agency has likely violated FOIA by failing to produce documents that are responsive to a timely FOIA request and that are directly relevant to the proposed rulemaking at issue.” Under pressure from the judge to deliver the documents quickly, CEQ agreed to hand over everything by May 5.

SEC — HOUSE DEMS BLAST DISCLOSURE PROPOSAL: House Financial Services Chairwoman Maxine Waters and other top Democrats last week blasted a proposed SEC rule that would require oil and gas companies to disclose payments to foreign governments, saying the measure is too weak, Pro Financial Services' Kellie Mejdrich reports. (Reg. 3235-AM06)

Pocket Docket

RFS: Refiners appear to be gearing up to ask the 10th Circuit for an *en banc* hearing of the case that voided three small refinery exemptions from the Renewable Fuel Standard. HollyFrontier and the Carl Icahn-owned Wynnewood Refining, which lost the original case, asked the court Thursday to seal their petitions for rehearing, a signal they plan to file an appeal before the March 24 deadline. Trump has gone back and forth on whether the administration should appeal.

RMP: The states challenging EPA's rollback of chemical safety requirements under the Risk Management Program have asked the court for a six-month freeze on their lawsuit so EPA can decide on their administrative petitions to reconsider the rulemaking. The states' administrative petition is based on their complaint that EPA did not account for major incidents at facilities covered by the previous RMP rules that occurred after the proposal's comment period closed in 2018, including the June 2019 Philadelphia Energy Solutions refinery disaster that released more than two tons of hydrofluoric acid. Should EPA deny their petition, that matter could be joined with the underlying lawsuit over the rollback, the states argued. (Reg. 2050-AG95)

TSCA: A new lawsuit alleges that EPA is operating its new chemical approval program "as a black box, thwarting the ability of the public to be informed and to provide input." Under the Toxic Substances Control Act, companies must get premanufacture approval of new chemicals. But a new suit from a coalition of environmental groups argues that EPA has not been fully transparent in reviewing new chemicals. The suit alleges that EPA "routinely" misses deadlines to notify the public about new applications and fails to release studies and information supporting those applications. "The public needs this information to provide input on the potential effects of, and exposures to, new chemicals and to advocate for restrictions on the chemicals' manufacture, use, and disposal necessary to protect public health and the environment," the suit says.

— An accompanying report from Earthjustice and the Environmental Defense Fund found that of 1,700 new chemical applications approved between the law's update in 2016 and last month, EPA published notices on average 87 days late, and in around 16 percent of cases published the notice after the chemical was approved.

Interstate ozone: The D.C. Circuit has scheduled oral arguments for May 7 in New York's lawsuit challenging EPA's rejection of its petition seeking more pollution control from 350 upwind sources of air pollution. The court has not yet said whether or how that plan might change because of the coronavirus.

MATS: A federal court last week told EPA to take another look at a lingering dispute over part of the Obama administration's Mercury and Air Toxics Standard.

Valuation rule: A federal magistrate judge says that environmentalists unhappy with the Interior Department's delayed implementation of a fossil fuel royalty rule will have a file a new lawsuit if they want to challenge it. The recommendation will go to a district court judge for a final decision.

Kids' climate case: The children and young adults' request for an *en banc* rehearing of their case before the U.S. Court of Appeals for the 9th Circuit has gotten some extensive backup in recent weeks via "friend of the court" briefs from supporters urging the court to reexamine the case. Notable among them was a brief from eight Senate Democrats and 16 House Democrats who pushed back on the court's conclusion that it cannot hear the case because it cannot order the kind of serious action the plaintiffs seek. "Not only does the Court have the power to provide declaratory relief and to order [the federal government] to develop a plan to curb greenhouse gas emissions to combat climate change, the judiciary as a whole has the duty to remedy the Youth Plaintiffs' constitutional injuries despite the inappropriate politicization of climate change."

— Briefs were also filed by: former Surgeons General Richard Carmona and David Satcher; children's rights advocates; environmental groups; international organizations; justice and equality groups; a coalition of law professors; the League of Women Voters and other groups; public health and medical organizations and experts; and self-identified youth experts.

Pipelines: A federal judge has tossed out a suit from environmental groups challenging the Coast Guard's contingency plan for responding to a worst-case discharge involving ice and high winds from two Enbridge-operated oil pipelines that run across the Straits of Mackinac, which connects Lake Michigan and Lake Huron. “The Coast Guard has provided sufficient evidence that they considered the possibility of ice and high waves if a worst-case discharge were to occur,” wrote Judge Thomas Ludington of the U.S. District Court for Eastern Michigan.

Efficiency: The American Public Gas Association and the Air-Conditioning, Heating, and Refrigeration Institute have both sued the Energy Department over its January rule strengthening energy efficiency requirements for certain commercial packaged boilers, which are low pressure boilers in industrial equipment with a top capacity of 300,000 Btu per hour. The lead case is 20-1068 in the D.C. Circuit.

Metal mining: A federal judge has upheld the Trump administration's revival of metal mining leases in Minnesota that had previously been canceled by the Obama administration.

Endangered species: Conservation groups have sued the Fish and Wildlife Service for Endangered Species Act protections for wolverines, of which fewer than 300 are left in the lower 48 states. Wolverines mostly live in more northern climates but have populations in mountainous Western states, and are threatened by climate change, which reduces the snow they need for denning and reproduction. FWS in 2016 withdrew a proposal to protect wolverines, but a judge overturned that decision.

— The Center for Biological Diversity says it will sue FWS for ESA protections for eight species of skink lizards found in Puerto Rico or the U.S. Virgin Islands. (The group last fall also moved toward litigation for a separate skink species found in the Florida Keys.)

— The 10th Circuit Court of Appeals has sided with a livestock industry challenge to FWS's critical habitat designation for jaguars in parts of New Mexico and Arizona. FWS did not comply with its own rules for designating unoccupied lands as critical habitat, the court concluded.

POLITICO Pro

Green, health groups fear pandemic eases path for Trump EPA rollbacks

<https://subscriber.politicopro.com/article/2020/03/green-health-groups-fear-pandemic-eases-path-for-trump-epa-rollbacks-1897781>

By Annie Snider

Environmental groups and public health advocates are raising concerns that disruptions posed by the efforts to combat the coronavirus pandemic are giving the Trump administration an opportunity to swiftly and quietly finalize a series of controversial deregulations.

As the growing pandemic consumes attention in Washington, D.C., and beyond, EPA is showing no signs of slowing down its work on regulations that it has been scrambling to finalize by mid-May, a rough deadline that's designed to prevent Democrats from easily overturning them if they win the White House and Congress in November.

"I am quite concerned that there will be an effort to rush deregulatory initiatives out the door while people are preoccupied with other problems," said Rena Steinzor, a law professor at the University of Maryland and past president of the Center for Progressive Reform. "And the way I look at it is, the number of people that are intimately involved in managing this crisis are outnumbered by the people who might want to do mischief."

On Wednesday, EPA formally proposed a significant broadening of a 2018 proposal to limit the type of scientific research the agency uses ([Reg. 2080-AA14](#)), offering the public the minimum 30 days to submit public comments — a timeline that advocates and Democratic lawmakers were saying was far too short, even before the coronavirus erupted.

Meanwhile, EPA is moving forward next week with a four-day-long peer-review of a closely watched draft risk evaluation for the widely used chemical trichloroethylene, or TCE, after switching it from an in-person meeting to a virtual one due to the virus outbreak.

The agency is also working to swiftly finish its new auto emissions regulation, the Safer Affordable Fuel Efficient (SAFE) Vehicles rule ([Reg. 2060-AU09](#)), although the agency says the Transportation Department is in the driver's seat on that process. And EPA faces a series of looming judicial deadlines for a series of lower profile rules, such as limits for toxic air emissions from facilities like petrochemical manufacturers ([Reg. 2060-AT85](#)).

"We're open and continuing our regulatory work business as usual. As [regulations.gov](#) is fully functioning, there is no barrier to the public providing comment during the established periods," EPA spokesperson Molly Block said by email.

Sources close to EPA say that the Trump administration has been scrambling to get major rules out the door this spring in order to avoid the risk that Democrats could use the Congressional Review Act to overturn the rollbacks if they win the White House and Congress in November. The 1996 law allows senators to swiftly nullify a regulation issued

within the prior 60 legislative days using a simple majority — a process Republicans are familiar with since they used it to nix 16 Obama-era regulations after the Trump administration took office.

Because of the unpredictability of Congress' schedule in an election year, the sources say EPA has identified May 20 as the deadline to avoid the 60-day window. Now, the pandemic stands to put the calendar in even greater flux.

“If you think Trump might be in trouble and might not win the election, that’s a reason to rush them out, because reversing the process, as Trump learned ... is incredibly time-consuming. You have to do the rulemaking in reverse,” Steinzor said.

The scientific transparency rule, which would effectively bar the agency from using most studies that haven’t made all of their underlying data and models public, is facing one of the most challenging time-crunches.

A long-time priority for industry, it is one of the most far-reaching and controversial regulations being advanced by the Trump EPA. Nearly 600,000 people commented on the original proposal, which drew fierce criticism from the scientific and public health communities. But the administration itself recognized that proposal was confusing, and finalized a supplemental proposal on Wednesday that clarified and significantly broadened the original policy's reach.

Democrats on Capitol Hill are blasting the Trump administration for moving forward with a regulation that would limit the federal government’s ability to base public health decisions on science at the very moment that the nation is engulfed by a public health crisis.

“At a time when the American people are looking to the federal government to be guided by science and lead ... this proposal is far from what our country needs,” Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee said in a statement Wednesday.

Paul Billings, senior vice president for advocacy at the American Lung Association, said that the rule has attracted higher levels of concern and opposition from doctors, researchers and the public than he'd seen in three decades of advocacy work. But, he said, the Covid-19 crisis is now diverting the attention of many of those same people, just as the short public comment period opened.

“Our pulmonologists and critical care doctors are doing ICU rotations, more rotations, longer weeks, what have you. It is a challenge for us,” he said.

Betsy Southerland, a former top EPA scientist who has helped coordinate comments on the rule as a member of the Environmental Protection Network, said even the experts who aren't on the front lines of the coronavirus response are facing major demands on their time that will make it difficult to weigh in on the rule. For instance, she said, academic researchers are scrambling to figure out how to teach their courses online while managing caregiving responsibilities for children and elders.

"What we believe is you absolutely, positively have to extend these public comment periods to a reasonable time until after the national emergency has been lifted," she said. The supplemental scientific transparency proposal should be open for 90 days of comment after the emergency is concluded and that three public hearings should be held, she added.

A decision not to extend the comment period could open up legal vulnerabilities for a rule that environmental groups are already preparing to challenge.

"This attack on health science is dangerous and unlawful at any time in American life and unconscionable as our nation faces an urgent and serious health crisis," Vickie Patton, general counsel at the Environmental Defense Fund, said by email. "To suggest that the public, and especially top public health experts, abruptly divert their attention in order to meet the agency's ill-timed and arbitrary comment deadline is unlawful and downright dangerous."

The science proposal has also faced criticism from EPA's Science Advisory Board, the majority of whose members were hand-picked by the Trump administration. The SAB had nearly completed its review of the original proposal when EPA issued its update earlier this month, which the panel now intends to address as well.

SAB Chairman Michael Honeycutt said he hopes to have that review, as well as another on EPA's proposed changes to the Mercury and Air Toxics Standards rule, out "within the next couple of weeks."

"We are trying our best to not let the coronavirus situation delay us too much," he said by email.

EPA is also facing a tight deadline for getting its SAFE Vehicle rule out the door.

That rule softens fuel economy standards for model year 2021 vehicles that will start reaching car dealers' lots later this year. But it also sets CAFE standards for model years 2022-26 for the first time. The law creating the CAFE program requires the National Highway Traffic Safety Administration to issue fuel economy rules at least 18 months before a model year begins, meaning the rule faces a March 31 deadline.

However, the SAFE Vehicles rule is snarled in interagency review as regulators struggle to justify the rollback. The New York Times reported in February that the draft final rule still looked like “Swiss cheese” and may not be finished “until this summer — if ever.” And earlier this month EPA’s own Science Advisory Board blasted EPA’s proposed rollback of emissions standards, concluding that the Obama-era rule “might provide a better outcome for society than the proposed revision.”

It’s not clear that Democrats would wield the Congressional Review Act against the SAFE Vehicles rule given its complexity and the amount of time that would be needed to craft a replacement. But its late finalization, combined with heavy criticism from EPA’s own advisers and lukewarm mixed support from automakers, could leave the rule vulnerable to repeal under a Democratic president in 2021.

Also facing deadlines are EPA’s first chemical risk evaluations under the 2016 update to the Toxic Substances Control Act.

Even with an extension, EPA faces a statutory deadline of June 20 to finish its evaluations for its first 10 priority substances. So far, it has finalized none of them, and has not yet issued drafts for two, including the high-profile material asbestos.

Many of EPA’s draft evaluations have been criticized by its peer reviewers as incomplete, leading EPA to conduct further study, such as its recent order for manufacturers to carry out testing on one chemical, Pigment Violet 29. Further throwing a wrench into the situation is last year’s court ruling directing EPA to review the risks posed by “legacy” uses of chemicals, such as asbestos insulation sitting in millions of homes and buildings around the country.

The agency is, however, still pressing forward with one of its most controversial draft risk evaluations, for TCE. The chemical is associated with a range of ill-health effects, from Parkinson’s disease to cancer. Richard Denison, senior scientist at the Environmental Defense Fund, said TCE is “way, way up there” on the list of substances he worries about as a chemical safety expert, both because of the dangers it poses at very low levels of exposure and because of its wide usage.

In 2016, when the Obama EPA proposed banning the chemical for key uses like dry cleaning and aerosol degreasing, it did so based on a body of research that found pregnant women’s exposure to even very low doses of TCE increased the risk of heart defects in their infants.

But when the Trump EPA released its new draft risk evaluation in late February, it opted to base its analysis not on the fetal cardiac effects, but on the effect TCE can have on the

immune system — a switch that was reportedly directed by the White House and that has the effect of raising the safety threshold 500 times the Obama EPA's level.

Public health advocates argue that this altered approach sets a dangerous precedent that, if left unchecked, could allow the agency to justify far higher safety thresholds for chemicals than the science justifies.

“The precedent that this could set of allowing the agency to completely allow an endpoint and do a bait and switch, essentially, is extremely dangerous,” Denison said.

He argued that EPA has been inappropriately rushing the peer-review process for all of the recent draft risk evaluations, asking the members of the peer-review panels it establishes for each draft risk evaluation to review roughly a thousand pages of technical documents in a matter of a few weeks.

Now, with the coronavirus significantly disrupting those panel members’ lives, he argued that a “meaningful, thoughtful” peer-review will be virtually impossible.

Alex Guillén contributed to this report.

Chemicals

Bloomberg Environment

EPA’s Glyphosate Approval Draws Challenge from Green Groups

<https://news.bloombergenvironment.com/environment-and-energy/epas-glyphosate-approval-draws-challenge-from-green-groups>

By Ellen Gilmer

- Lawsuit filed in Ninth Circuit
- Targets EPA assurance that chemical is safe

Environmental groups are taking the EPA back to court over its approval of the herbicide glyphosate.

The Natural Resources Defense Council and Pesticide Action Network North America filed suit Friday in the U.S. Court of Appeals for the Ninth Circuit.

The groups are taking aim at the Environmental Protection Agency’s January determination that “there are no risks of concern to human health when glyphosate is used according to the label and that it is not a carcinogen.”

The chemical is at the center of ballooning litigation from individuals who say the product causes non-Hodgkin’s lymphoma and other cancers. It’s the key ingredient in Monsanto Co.’s popular herbicide Roundup. Bayer AG acquired Monsanto last year.

The case is NRDC v. EPA, 9th Cir., No. 20-70787, 3/20/2020

Congress

Bloomberg Environment

Senate Panel Calls for Written Testimony on Climate Pollutant

<https://news.bloombergenvironment.com/environment-and-energy/senate-panel-calls-for-written-testimony-on-climate-pollutant>

BY STEPHEN LEE

Senate lawmakers have put out a call for electronically-submitted written testimony on a bill (S. 2754) **that would phase down the production and use of a powerful climate-warming refrigerant.**

The bill, sponsored by Sen. John Kennedy (R-La.), is aimed at curbing the use of hydrofluorocarbons (HFCs), which have a global warming effect potentially thousands of times greater than carbon dioxide.

- A broad-ranging energy package was pulled from the Senate floor earlier this month due to White House and some Republicans opposition to an amendment based on the same Senate bill. Republicans have argued the bill would force the U.S. to comply with a 2016 deal reached in Kigali, Rwanda, to limit HFCs, which the Senate hasn't ratified.
- The Senate Environment and Public Works Committee is taking comments from March 25 to April 8. Testimony must be electronically submitted in PDF format to the committee.

Coronavirus

Bloomberg Environment

EPA Working With Companies to ID New Coronavirus Disinfectants

<https://news.bloombergenvironment.com/environment-and-energy/epa-working-with-companies-to-id-new-coronavirus-disinfectants>

BY ADAM ALLINGTON AND PAT RIZZUTO

- EPA fast-tracking applications for products
- Agency head holds virtual meeting with manufacturers

Disinfectant manufacturers held a virtual meeting with the head of the Environmental Protection Agency Friday as the agency fast-tracks more products to stave off the new coronavirus.

EPA Administrator Andrew Wheeler held a series of conference calls with the Consumer Brands Association and the Household & Commercial Products Association, among others, to discuss the agency's expanded and expedited process to approve disinfectants to prevent Covid-19.

"Our collaboration is critical to slowing the spread of this virus, keeping us safe and healthy. By expediting reviews—both in labeling familiar products, and by approving new products

for market—we're aiding American families and communities across America," Wheeler said in a news release.

The agency on Monday released an expanded list of registered disinfectant products that have qualified for use against coronavirus, with the the total number of products now at 287.

Wipes made by GOJO Industries Inc., known for its Purell hand sanitizer, are among the products on the EPA's approved list.

"Demand for such products has prompted GOJO to boost production with additional shifts, and the company is hiring workers for its manufacturing and distribution operations," Samantha Williams, GOJO's senior director for corporate communications, said in an email.

The EPA's conference calls came one day after the Department of Homeland Security added cleaning product manufacturers to the list of workers deemed necessary to maintain "essential critical infrastructure" as the country fights the pandemic.

Emerging Viral Pathogens Program

The fast-tracking of disinfectants is part of an EPA program set up in 2016 to accelerate the availability of products when a public health crisis is declared.

Under the program, EPA can expedite the review of companies' requests to add "emerging viral pathogen" claims to their already-registered surface disinfectant labels. In many cases, this means claims can be approved within 14 days, compared to the 90 days it normally takes.

"Initially, the limited number of disinfectants that were approved to kill the virus meant consumers, along with hospitals, nursing homes, and other institutions, couldn't get what they needed," William Balek, general counsel for the Worldwide Cleaning Industry Association, said.

Information for Consumers

For people interested in purchasing products for use against coronavirus, the EPA advises consumers to check the registration number included on List N. If the number matches, the product can be used against the new coronavirus.

Likewise, products may be marketed and sold under different brand names, but if they have the same first two sets of EPA registration numbers, they are related products.

For instance, “if EPA Reg. No. 12345-12 is on List N, you can buy EPA Reg. No. 12345-12-2567 and use the same contact time and virus from List N,” the agency said.

Bloomberg Environment

Companies Asking EPA for ‘Act of God’ Extensions Due to Virus

<https://news.bloombergenvironment.com/environment-and-energy/companies-asking-epa-for-act-of-god-extensions-due-to-virus>

BY STEPHEN LEE AND AMENA H. SAIYID

- Companies, cities want EPA compliance extensions
- Agency says it will review requests case by case

Companies and municipalities want the EPA and state regulators to invoke the “act of God” provisions of their settlement agreements in the wake of the new coronavirus pandemic, industry lawyers say.

“It’s not a question of, ‘Will it happen?’ It is happening across the country,” said Brian Israel, head of the environmental practice group at Arnold & Porter Kaye Scholer LLP. “Companies [are] asking either the EPA or other agencies, whoever is the relevant supervising agency, now—today—for some relief in the schedule for achieving those requirements.”

Force majeure provisions free a contract’s parties from obligations in the event of an unforeseeable circumstance, such as an earthquake, a flood, or even a key employee’s inability to file a report because of illness. The provisions are commonly included in settlement agreements with the Environmental Protection Agency.

The EPA is “aware of the potential impact the threat of Covid-19 may have on facility operations. EPA will evaluate requests to invoke force majeure or extension provisions of enforcement agreements on a case-by-case basis,” an agency spokesperson said, referring to the disease caused by coronavirus.

Requests Being Filed

Israel, a former trial attorney at the Justice Department’s environmental enforcement section during the Clinton administration, said his firm is already seeing companies requesting relief, for example, from having to perform groundwater monitoring because they can’t get people to perform the tests.

Other examples include companies that have to do public outreach as part of their settlements, provide training to employees who now aren’t coming to work, or process samples in labs that are now closed, Israel said.

Erika Powers, chair of the environmental department at Barnes & Thornburg LLP, said her firm is getting queries about force majeure exemptions not only from clients but also from vendors and contractors serving those clients.

The firm is now advising clients on legal avenues they should pursue “to protect them, and risk of penalties during this time period,” Fredric Andes, a partner at Barnes & Thornburg, said.

Proactive Notification

Andes and Powers are urging their clients to be proactive in notifying the EPA and relevant agencies that they’ll be unable to comply on time, and that they should ensure the notice specifies exactly which obligations they can’t meet.

The deadline for notification can vary anywhere from 72 hours to 14 days after a company realizes it won’t be able to meet its obligations.

Andes cautioned about relying on the word of federal and state agencies that pledge no penalties for compliance delays. “Make sure you document everything. Let the agencies know well in advance so they don’t penalize you later,” he said.

The big question, Andes said, is “how much detail do you provide? We don’t know. Everyone is having issues with coronavirus. But you just can’t say, ‘Because of coronavirus, my deadlines are gone.’ Say you are having coronavirus issues and explain why.”

The EPA didn’t respond to questions about whether it is developing guidance on handling force majeure requests, saying it doesn’t comment on enforcement matters.

EPA Likely to Agree

Jeff Holmstead, the EPA’s assistant administrator for air and radiation during the George W. Bush administration, predicted that the agency will be more willing than usual to grant force majeure extensions, due to the extent of the nationwide self-quarantine measures.

“Where there is a good reason, EPA is likely to agree, and this is a good thing,” Holmstead, now a partner with Bracewell LLP, said.

Ordinarily, the agency sets a high bar for entities to prove they’ve been affected by an act of God, according to Israel. A business must provide evidence that it made good-faith efforts to comply with its consent agreement or settlement, but was blocked from doing so for reasons out of its control.

“By and large, that’s not going to be that difficult to meet in this case, depending upon the activity,” Israel said. “This is a truly unforeseen event,” with the national emergency and everyone told to stay home, he said.

Christine Todd Whitman, the former New Jersey governor who led the EPA under the George W. Bush administration, also said she thinks the agency should be open to granting force majeure exemptions.

If companies don’t ask for force majeure and comply with consent decrees, they risk exposing themselves to injury and even wrongful death liabilities, said Thomas Lorenzen, former assistant chief of the Justice Department’s environment and natural resources division who’s now a partner at Crowell & Morning LLP.

When force majeure requests are granted, agencies typically negotiate an extension and schedule a date to review how things have developed, Israel said. But the longer the national self-quarantine lasts, the less willing the EPA will be to grant continued extensions, he said.

“I would not advise clients to anticipate that you’ll be able to get a second extension,” Israel said.

Some Fear Abuse

David Baron, managing attorney at environmental law firm Earthjustice, said there should be no blanket extensions of clean air, clean water, and other health compliance deadlines.

“These deadlines, after all, are meant to protect people from dangerous health threats from pollution—threats that are major concerns in addition to Covid-19,” Baron said. “The burden needs to be on the industry seeking relief to show that inability to comply in a specific case is due to Covid-19, not failure of the industry to timely install or maintain required pollution controls.”

But Whitman said she doubted that companies will try to abuse their force majeure clauses during the coronavirus crisis.

“There may be some outliers that would try something like that, but this is a national crisis,” Whitman said. “I don’t see anybody even thinking that far ahead. Maybe they would eventually, but not now.”

CNN

Scammers use robocalls to falsely offer free coronavirus test kits and low-priced health insurance

<https://www.cnn.com/2020/03/20/politics/kfile-robocalls-coronavirus-scammers/index.html>

By Em Steck, Andrew Kaczynski and Nathan McDermott

(CNN) Scammers are using robocalls that spread disinformation about the coronavirus pandemic and lying about offering low-priced health insurance and free coronavirus test kits.

CNN's KFile listened to and reviewed data of coronavirus robocalls provided by the protection app NoMoRobo and found more than 60 different phone numbers falsely claiming to have free coronavirus test kits or advertising health insurance.

Another kind of robocall, sponsored by the Support American Leaders PAC, uses a recording of President Donald Trump and asks callers to sign a petition to ban flights from China. The group is not affiliated with Trump and, unlike most other super PACs, doesn't raise money for advertisements to support Trump, either. It mostly raises funds to pay for more robocalls, which are used to raise more funds, with the owner of the group pocketing the difference. The PAC did not respond to CNN requests for comment.

The coronavirus robocalls are dangerous for a myriad of reasons, said Aaron Foss, the founder of NoMoRobo.

"With all of the confusion around the mobilization efforts, you really don't know what to believe," Foss said over email. "With everyone on social isolation, many, many more people are at home, especially seniors," making them more available to accept the calls and likely to give their credit card information or a donation if asked, he explained.

While there are automated calls from scammers, legitimate automated messages from federal, state and local officials continue to inform the public on the coronavirus pandemic by offering informational resources, like a referral number to the coronavirus hotline or a government website. If a robocall offers free or discounted services, contacts you without your previous consent, or tells you to press "1" or some other key to be taken off a call list, it is likely a scam call.

Consumers are advised by federal agencies not to pick up the phone if it is an unknown number and not to engage with the robocall if they do. They can also block the call using software or a service from their phone provider, and report an unwanted or illegal call to the Federal Trade Commission.

Several federal agencies oversee the fight against robocalls, including the FTC and the Federal Communications Commission.

A spokesperson for the FCC, Will Wiquist, told CNN over email they were aware of such calls and were looking into them.

"As a general matter we wouldn't weigh in on if a certain example might be a violation and we cannot comment on if we would formally investigate," he told CNN. "That said, we are aware of some such communications and are looking into it."

How the coronavirus robocalls work

A robocall is defined by the FTC as illegal if it is trying to sell you something unless a company has your written permission to call you that way.

Purely informational calls, such as reminding you of an appointment, school delays, flight updates, are legal, as are calls from health care providers reminding you to pick up your prescription. Automated political calls, debt collection calls and messages from charities are also exempt.

But the calls falsely advertising free coronavirus test kits are illegal.

According to Foss, the scam works like this: Criminal robocallers blast out millions of automated calls using "gateway carriers," which accept foreign call traffic and direct it to US consumers. Once a person accepts the phone call, they hear a pre-recorded message regarding the coronavirus that can go like this:

The coronavirus has caused the US to declare a national emergency. The Families First Coronavirus Response Act has made coronavirus testing more accessible immediately. If you want to receive a free testing kit delivered overnight to your home, press one."

The message is riddled with inaccuracies. While the US has declared a national emergency, The Families First Coronavirus Response Act was not signed into law when the robocall first sprung up on March 16. While coronavirus testing is ramping up in the US, there is no legitimate way to get a home-delivered kit. Testing is still limited through lab facilities ordered by medical professionals.

If a person presses "1," they are transferred to a call center, which can either be in the US or overseas, where an operator impersonates the federal government and tries to scam the caller into handing over their credit card information, usually for the "shipping and handling" of the "free" coronavirus test kit, Foss said.

"It's a field day for the robocallers," Foss told CNN over email. "Best case, the scammers steal their money and are never heard from again. Worst case, the scammers ship a non-working 'test kit' that could make the pandemic even worse."

"If that fake test kit says you don't have the virus, you're more likely to go out and get infected or infect others," Foss added.

And if a person does fall for one of these scams, it's just the beginning. Foss says that your number is then put on a "high value target" list that leaves you vulnerable to more robocall scams in the future.

One robocall called CNN's KFile trying to sell health insurance plans. A CNN reporter pressed "1: to speak with a representative." A woman answered, "Hi, this is Christina. Do you have insurance and don't like it or need insurance?"

The conversation quickly turned hostile before CNN could identify itself as journalists. When asked who was sponsoring the call, the representative responded, "Who's sponsoring what? If you were transferred to me you had to push a button to get to me. We were reaching out to make sure you have health insurance. Have you been watching the news?"

"I have been watching the news, yeah," a CNN reporter said.

"OK, we were just reaching out to make sure you have health insurance because things are pretty scary right now. So do you need help with health insurance? Because I'm an independent broker. I don't work for an insurance agency, I actually work for my client. If you need help, I can definitely get you some insurance," she said.

"Who's your client? Like, if you're an independent broker?"

"I'm reaching out to people. If you're not my client, then we shouldn't be talking anymore," she said.

After trying to clarify who she worked for, the representative snapped.

"Do you need help? You pressed the button because you said you needed insurance. There was a button that said if you want to be put on the do not call list, you could have pressed that one but you chose to press the one to reach me and now you're asking me 20 questions. All you had to do was

push 2 and you would have been put on the do not call list. But I'll take care of it for you on this end." Then she hung up.

Not the World Health Organization

Another call seemingly impersonates the World Health Organization, claiming to be the "Worldwide Health Organization" and offers protective equipment from the EPA.

"Greetings this is an automated message alert from the Worldwide Health Organization to inform you about the EPA's Emerging Viral Pathogen Program for the coronavirus protection," the call says. "We offer you the opportunity to obtain the most powerful and secure protection equipment to protect yourself and all your family members."

A callback number from the robocall is no longer in service. The EPA does not review those types of devices.

In an email to CNN, a spokesperson for the EPA wrote, "The emerging viral pathogens claim is a real thing, but it only applies to EPA-registered disinfectants has reviewed data on, not devices or machines."

Super PAC robocalls play on people's fears and politics

Some robocalls are taking advantage of public anxiety by playing to people's politics. Support American Leaders PAC, a super PAC that CNN previously reported on for impersonating the Trump campaign, begins its robocalls with a recording of Donald Trump.

"I'm Donald Trump, we have to fix this because it just doesn't work," the recording says, followed by a male voice saying: "President Trump needs your emergency support to pressure Congress to suspend all flights from China to the US, so we can stem the coronavirus outbreak. If I have your permission to sign your name to suspend all flights from China to the US and support President Trump, press '1'."

If the listener presses "1" on their phones, they get taken to a phone operator who then asks for a donation.

The call was detected on March 12; Trump suspended virtually all flights to and from China in January, making the PAC's assertion that he needs support to pressure Congress false. Also, unlike most other super PACs that raise money to support candidates by running ads or supporting efforts to increase voter turnout, Support American Leaders PAC effectively raises most of its money for robocalls, which are then made to solicit more money, and so on. Matthew Tunstall, the man who runs Support American Leaders PAC, takes home whatever money remains.

As CNN previously reported, Tunstall has a history of running these type of shadowy groups that target people with politically charged messages before asking them for a donation under the guise that the person's donation is actually going towards helping a candidate.

Neither Tunstall, nor Maureen Otis, the PAC's listed treasurer, returned a CNN request for comment.

The Trump campaign condemned the PAC robocall in an email to CNN's KFile.

"Scammers will use every trick in the book to try to convince people that something is sanctioned communication from the President or his campaign. This call is not authentic and we do not condone it," wrote spokesman Ken Farnaso.

Despite this, there's little the Federal Elections Commission can do, according to Christian Hilland, the FEC's Deputy Press Officer.

"The agency is currently operating without a working quorum, and as a result, the Commission is unable to move forward on enforcement matters at this time," he said.

E&E

Groups: Make airline help contingent on enviro protections

<https://www.eenews.net/greenwire/stories/1062655635/search?keyword=EPA>

By Maxine Joselow

More than 200 groups today urged Congress to make coronavirus-related aid for the airline industry contingent on companies cutting carbon emissions and improving treatment of workers.

In a letter to House and Senate leadership, the groups wrote that the industry should not be allowed to "shirk its responsibility to workers or return to business as usual in the face of the climate crisis."

Signing the missive were an assortment of environmental and workers rights groups, including the Center for Biological Diversity, Friends of the Earth, Climate Hawks Vote and the Labor Network for Sustainability.

The letter comes after Senate Republicans yesterday rolled out details of a \$1 trillion economic stimulus that would offer relief to sectors hit hard by the novel coronavirus pandemic (E&E Daily, March 20).

The GOP legislation would provide \$58 billion to the airline industry, which has seen passenger numbers plummet amid the outbreak.

But in their letter, the groups argued that this aid should come with climate strings attached, including requirements to reduce planet-warming emissions.

In particular, they called on EPA to finalize standards that would require at least a 2.5% annual reduction in greenhouse gas emissions from U.S. airplanes, as well as an absolute cap on total carbon emissions from the U.S. plane fleet.

"Status quo operation of the aviation industry is incompatible with global efforts to avoid the worst impacts of climate change," they wrote, adding, "If emissions are not curbed, between 2020 and 2050, aviation is projected to consume over a quarter of the entire global budget for a 1.5°C warming scenario."

One prominent signatory of the letter was Jane Fonda, the actress who has led weekly Fire Drill Fridays protests on climate change.

"Any bailout needs to acknowledge that we are in a climate emergency, and drive the airline industry towards a zero-emission future," Fonda said in a statement. "If airline executives want taxpayers to bail them out, they need to commit to cutting pollution and protecting the industry's workers."

The letter follows similar demands from Senate Democrats, including Sen. Sheldon Whitehouse of Rhode Island (*Climatewire*, March 19).

E&E

Pandemic could stall fight over Trump power plant rule

<https://www.eenews.net/greenwire/stories/1062655149/search?keyword=EPA>

By Niina H. Farah

The courtroom battle over the Trump administration's Clean Power Plan replacement may soon be the next case delayed due to the spread of the novel coronavirus.

States, municipalities, public health and environmental groups, clean energy trade associations and power companies involved in litigation over EPA's Affordable Clean Energy rule yesterday asked judges on the U.S. Court of Appeals for the District of Columbia Circuit to push back their March 27 briefing deadline by three weeks as a result of the evolving pandemic.

The groups, states, companies and trade organizations are asking the D.C. Circuit to overturn the Trump administration's rule governing greenhouse gas emissions from power plants.

"Recent developments associated with the COVID-19 pandemic have presented significant logistical challenges for Coordinating Petitioners and have presented a set of rapidly evolving changes in work environments for counsel," the parties wrote in their brief to the court.

"Some counsel actively involved in the briefing for Coordinating Petitioners — including those located in the San Francisco Bay Area — are subject to

'shelter in place' orders prohibiting activity outside the home other than enumerated essential purposes such as purchasing food."

The filing came the same day as California Gov. Gavin Newsom (D) issued a "stay at home" order for the entire state to stem the spread of the disease.

The attorneys also cited workplace, school and day care closures in places like New York City and Washington as inhibiting the availability of counsel and their clients to work.

They noted in a follow-up brief that their motion was unopposed by all parties in the case, including EPA. The agency previously asked the D.C. Circuit to fast-track the case, which would have increased the odds of a Supreme Court airing before the end of President Trump's first term.

Under the new proposed schedule, initial filings in the case would be due April 17, pushing back the deadline for final briefs from July 30 to Aug. 13.

E&E

Ethanol feeds booming production of hand sanitizer

<https://www.eenews.net/greenwire/stories/1062655513/search?keyword=EPA>

By Marc Heller

For companies that make ethanol for fuel, these may be the worst of times. But another ethanol-based product — hand sanitizer — is booming.

Spurred by the spread of the new coronavirus, hand sanitizer is in such demand that the Corn Refiners Association, a trade group, reassured the public yesterday that its members are keeping pace providing a key ingredient, while urging consumers not to hoard the product.

"America's corn refiners are producing trainloads of industrial alcohol on a daily basis," said the CRA's president and CEO, John Bode. "There has been no shortfall in meeting alcohol orders for production of hand sanitizers or other health-related sanitizing products. The distribution system is quickly catching up with the surge in demand for these products."

Corn-based ethanol is a common ingredient in sanitizers. It's produced by converting cornstarch to glucose and combining it with yeast. Toiletries and cosmetics, including sanitizer, account for almost a quarter of U.S. end markets for industrial alcohol, according to the CRA.

Corn-based ingredients also account for a quarter of hand soap's ingredients, according to the Corn Refiners, representing companies such as Archer Daniels Midland, Cargill and Grain Processing Corp.

With consumers clamoring for sanitizer, ethanol producers might seem inclined to wash their hands of fuel — which is struggling from the economic hit to transportation, as well as some federal renewable fuel policies — and turn to toiletries.

But that's not a simple transition, said Chad Friese, general manager of Chippewa Valley Ethanol Co. in Benson, Minn.

Regulatory hurdles face companies that want to make that transition, Friese said, the biggest being quality-related. Ethanol that's eventually used on products that touch the skin needs to be of higher quality than the type that goes into gas tanks, he told reporters yesterday on a coronavirus-related conference call with the Renewable Fuels Association.

That may be a shame for biofuel companies, which were already having a hard time before the virus hit. Friese and other RFA members said they expect facilities to lay off workers and close either partially or fully, at least temporarily. They've asked EPA to stop exempting small refineries from biofuel-blending requirements for the time being.

For the corn refiners, the crisis also points to the critical nature of agricultural commodities during such emergencies. The CRA welcomed news yesterday that the Trump administration deemed food and agriculture among the "critical infrastructure industries" in which employees must maintain a normal work schedule.

Unlike companies that put ethanol into fuel, the non-fuel-related ethanol business is relatively small and stable, said Friese, whose company devotes about 15% or 20% of its production to the industrial alcohol market — such as cleaners, vaccines, hand sanitizer and alcoholic beverages.

For those driven to drink by the crisis, there may be a hint of bad news, though: Some companies that make alcohol for beverages are reading the market and switching over to sanitizer, Friese said. "You may see less vodka but more hand sanitizer."

E&E

Wheeler urges telework as 2nd staffer tests positive

<https://www.eenews.net/greenwire/stories/1062655813/search?keyword=EPA>

By Corbin Hiar

Administrator Andrew Wheeler is urging all EPA employees to work from home as reports mount of confirmed or suspected cases of COVID-19 in the agency's regional offices.

"My expectation is that most everyone on the EPA team across the country is working at home, unless there is a compelling mission critical reason for you to be in the office," Wheeler said yesterday in a video that appears to have been recorded in his office at EPA headquarters. "COVID-19 is a fast-moving and rapidly changing situation, and I understand that this is a difficult and scary time for all of us.

"I want to thank you for your dedication and commitment, and please take good care of yourselves and your families," the EPA chief added in his address to agency staff.

The message came the same day that a second EPA employee tested positive for COVID-19, the respiratory illness caused by the novel coronavirus. The affected employee works on the same floor of the agency's New England Regional Office as another staffer who "is symptomatic after being in close contact with someone that did test positive," Arthur Johnson, the director of Region 1's Mission Support Division, said in an email. They were both last in the office on March 11, the last day before Wheeler relaxed telework restrictions for the Boston-based office (Greenwire, March 12).

Johnson ordered a partial evacuation of the Boston office "effective immediately" and said the agency has begun an investigation of the employee's contacts. Potentially affected employees will be contacted, and the office will receive "appropriate cleaning," he added.

The agency reported its first confirmed COVID-19 case on Wednesday in its Montana office (Greenwire, March 19). Corry Schiermeyer, an EPA spokeswoman, said at noon today that the agency hasn't confirmed any cases beyond those two.

But in EPA's New York-based Region 2, a couple of employees came into close contact with someone who has tested positive for COVID-19 and another reported indirect contact with someone infected by the coronavirus, according to internalemails obtained by E&E News. It's unclear if those employees have been tested for COVID-19. They are all now in self-quarantine, the emails said.

And in EPA's Cincinnati office, two employees reported potential COVID-19 infections. One has tested negative; the other test was still pending as of Wednesday, Vique Caro, the office's director of administration and resources management, said in an email.

Earlier this week, the agency also moved to give employees working from home more discretion about when they do their jobs. Donna Vizian, the head of the agency's Office of Mission Support, said in an all-staff email that employees could work anytime between 5 a.m. and 11:30 p.m. and "take unpaid breaks during the day, to account for individual needs" such as taking care of children who are out of school.

Still, Vizian encouraged employees to coordinate their hours with supervisors.

"The objective is that employees are available during normal business hours, unless otherwise prevented from working during those hours," she wrote.

Reporter Kevin Bogardus contributed.

Law360

Enviro Attorneys Pivot To Clients' Coronavirus Concerns

<https://www.law360.com/articles/1254969>

By Juan Carlos Rodriguez

Law360 (March 19, 2020, 7:15 PM EDT) -- Environmental attorneys are handling a surge of inquiries from clients who are wrestling with how to continue to meet pollution and reporting requirements now that many of their key employees are subject to coronavirus-related workplace safety precautions.

The COVID-19 pandemic has disrupted business practices and forced many people in private industry as well as at state and federal regulatory agencies to work remotely or curtail normal work behavior. Industry players are grappling with how to meet compliance deadlines and debating whether to seek temporary exemptions from regulators. And regulatory reaction has been mixed, with some staffers indicating they'll accommodate delays while others want to stick to prescribed deadlines.

"Everything that a facility might do related to environmental compliance might be affected, from filing discharge monitoring reports for water discharges to air monitoring and other ongoing operations," said Brian Israel, chair of Arnold & Porter's environmental practice group. "I think there's going to have to be some decisions made about what is a sufficiently high priority that it's an essential duty that needs to continue."

He said running systems that prevent environmental problems is clearly important, but companies may decide that filing the related paperwork in a timely manner doesn't rise to the same level. Businesses could seek an exemption from the U.S. Environmental Protection Agency, which has some authority to grant such requests.

There have been disasters in the past, such as 9/11 and hurricanes Katrina and Harvey, that have prompted federal and state environmental regulators to lift some requirements to help businesses contribute to response efforts, Israel said.

"When you have these national or localized emergencies, you do see a willingness to grant waivers," he said.

The EPA, for its part, has urged all of its employees who are able to telecommute to do so,

and the agency confirmed Thursday that at least one of its employees, in Montana, is "presumed positive" for COVID-19.

The agency didn't have much to say this week in response to questions about what it's planning and how it may respond to industry requests.

"During the coronavirus outbreak, EPA is taking appropriate steps to ensure the safety of EPA employees and members of the public with whom they may interact while continuing our mission-critical function to protect the public from threats to human health and the environment arising from violations of the environmental laws," EPA spokesperson Ken Labbe said Wednesday.

Nadira Clarke, a partner at Baker Botts LLP with expertise in environmental crisis management, said her clients have reported that local, state and federal regulators have shown varying degrees of responsiveness to coronavirus-related inquiries.

"It seems to be a little dependent less on a particular agency's or government's overall perspective than on specific individuals, some of whom may recognize the immediate need to delay deadlines and focus on the things of most imminent concern, and some with the view that all of the regulatory requirements and time frames apply, and who don't seem interested or invested into looking into whether those can be tolled in any way," Clarke said.

If there is confusion about whether decisions are being made according to an agency directive or the discretion of individual staffers, that can seriously complicate the decision-making process for businesses, she said.

And she said the longer the coronavirus presents a crisis situation, the more agencies are going to be confronted by the same challenges as industry in terms of figuring out how to maintain safe plant operations and simultaneously protect their workers.

While it's true that the EPA and other agencies may use enforcement discretion to provide some leeway to businesses, that may not be the best course of action for everyone, Thompson & Knight LLP partner Ashley Phillips said.

"If companies can do some planning and map out a staff and resources plan for keeping up with these obligations, and keeping up with these reporting deadlines, that will save them some time, money and effort in the long run," Phillips said.

She said if there are delays in reporting, even sanctioned ones, agencies could require additional paperwork to address the discrepancies.

Aside from agency and company employees, there's a question around the army of contractors who do essential work for both industry and agencies, said Byron Brown, senior counsel at Crowell & Moring LLP.

"The obligations under a permit or a regulation or a statute might fall on a specific company, but so many of the requirements are satisfied through a collective effort with contractors and other support personnel," Brown said. "And if people are told to work remotely or there are travel restrictions in place ... that limits the ability of people to get out into the field and do work they'd normally be doing to support environmental compliance."

Israel said that aside from statutory and regulatory issues, many companies are operating under court-ordered conditions that arose through consent decrees with the EPA. In those cases, he said lawyers and clients may start investigating whether there are provisions in the settlement agreements that may provide relief if compliance becomes a serious concern.

He said many such deals contain "force majeure" provisions that allow for some exceptions in extreme circumstances. The issue will be finding out if the provisions can be activated.

"Every force majeure provision is different," Israel said. "You have to come up with a plan. You can't just say there's a global pandemic, you have to tell them how much time you need, etc. Then EPA will decide whether it's legitimate or not."

Clarke said that in this very uncertain time, the role of environmental attorneys as advisers has become crucial.

"There seems to be a lot of engagement from companies that are relying heavily on our counsel because they have so many things coming at them in so many different areas, and they are moving so fast and have so many decisions to make," she said.

--Editing by Aaron Pelc and Emily Kokoll.

POLITICO's Energy Regulation Watch

Regs in the time of coronavirus

<https://subscriber.politicopro.com/newsletter/2020/03/regs-in-the-time-of-coronavirus-786268>

By Alex Guillen

With help from Gavin Bade and Eric Wolff

REGS IN THE TIME OF CORONAVIRUS: Environmental groups and public health advocates are raising concerns that disruptions posed by the efforts to combat the coronavirus pandemic are giving the Trump administration an opportunity to swiftly and quietly finalize a series of controversial deregulations, Annie Snider reports today. As the growing pandemic consumes attention in Washington and beyond, the EPA is showing no signs of slowing down its work on regulations that it has been scrambling to finalize by mid-May, a rough deadline that's designed to prevent Democrats from easily overturning them if they win the White House and Congress in November.

Local governments call for pause: Groups representing states, cities and counties today asked President Donald Trump to suspend public comment periods during the pandemic. In a letter, the groups said state and local officials are "vital" to federal policymaking, but that those officials are unable to provide input during the outbreak, Annie reports.

FERCIN' 9 TO 5: FERC will extend filing deadlines and consider loosening the enforcement of some industry regulations in response to the coronavirus outbreak, Chairman Neil Chatterjee said during a teleconference Thursday. But the agency will not pause its own regulatory work as one member requested, Gavin Bade reports.

COURTROOM DELAYS: The coronavirus has led to widespread court-related delays. The D.C. Circuit has delayed a much-watched *en banc* appeal of the Atlantic Sunrise pipeline case, pushing arguments back from March 31 to April 28, and potentially later. The court has also canceled all upcoming in-person arguments, meaning panels of judges will decide for each case whether to postpone arguments, hold them by teleconference or decide based on the briefs.

Briefing schedules are also starting to see delays. For example, on Thursday night, the blue states and environmental groups challenging EPA's Affordable Clean Energy rule asked for three extra weeks to file their opening briefs, a delay to which the EPA agreed. Workplace closures, especially in California, which has ordered residents to "shelter in place,"

have hamstrung the complex coordination required between the various challengers, who have to divvy up issues and negotiate a limited word count. Many of the attorneys are working from home with few child care options as well, they said. Pushing the briefing schedule back by 21 days isn't likely to significantly delay the case on its own. The new schedule has last briefs due Aug. 13, still during the D.C. Circuit's normal summer hiatus from oral arguments. (Reg. 2060-AT67)

WELCOME TO ENERGY REGULATION WATCH, your biweekly guide to the world of energy and environmental regulations. Any tips, comments and suggestions? Send them to EnergyRegWatch@politicopro.com, and follow me on Twitter at @alexsguillen. And don't forget our other helpful online tools, like the Regulatory Compass and Document Drawer.

EPA Updates

SAB EYES METHANE ROLLBACK, LEAD AND COPPER

RULE: EPA's Science Advisory Board will hold a teleconference on March 30 to be briefed by the agency on two rulemakings, its appeal of methane emissions rules for newly built oil and gas wells (Reg. 2060-AT90) and the proposed lead and copper rule (Reg. 2040-AF15). If the SAB moves forward with reviews after those briefings, it will form workgroups and hold another teleconference on May 11 to review those groups' reports.

NO HELP FOR WOOD STOVE INDUSTRY: EPA has reversed its plan to extend an upcoming deadline for retailers to sell off stocks of dirtier-burning residential wood stoves after the agency said industry could not justify needing more time. The agency in 2018 had proposed giving retailers two extra years before having to switch to selling cleaner-burning wood heaters only, but in last week's final rule reversed that decision after finding the industry could not justify it. (Reg. 2060-AU00)

TSCA — EPA UPDATES REPORTING RULE AHEAD OF 2020

SEASON: EPA has issued final amendments to the Chemical Data Reporting rule to match up with the 2016 legislative update to the Toxic Substances Control Act. The rule lays out what companies must report to

EPA every four years — including this coming summer, the first time since TSCA was amended — so that the agency stays abreast of chemicals in commerce trends. Some of the changes are to bring the rule into alignment with the updated TSCA law, but the rule also includes new reporting exemptions for certain byproducts. The reporting period will begin June 1 and normally goes through Sept. 30, but EPA is giving companies until Nov. 30 to get used to the changes and learn about updated reporting tools. (Reg. 2070-AK33)

More TSCA — SACC dings NMP evaluation: EPA's Science Advisory Committee on Chemicals has released its peer review of EPA's draft risk evaluation for N-Methylpyrrolidone, or NMP. Many committee members expressed concern that EPA limited consideration of environmental releases to “water alone,” as opposed to entering the air or land, a decision it said “provides an inadequate picture of risk from this chemical. The Agency’s current approach of looking narrowly at risks under TSCA regulations leaves over 99% of all environmental releases for NMP unassessed.”

FOURTH GROUP ASKS EPA TO TOSS ENDANGERMENT

FINDING: The Center for the Study of Carbon Dioxide and Global Change, a group that rejects mainstream climate science, has filed a petition asking EPA to undo the 2009 “endangerment finding” that underlies many of EPA's key climate regulations on power plants and vehicles. The Center's funders include Murray Energy and the Trump-allied Mercer family. The petition argues that rising greenhouse gases do not represent a current or future threat to public welfare, a view with most climate scientists reject, and that technological advancements enabled by fossil fuel use have improved standards of living. Action from EPA seems unlikely as the agency has been sitting on three similar petitions since the early days of the Trump administration over concerns that undoing the endangerment finding would bring a host of scientific, legal and political problems.

LANDFILL METHANE — EPA FORMALLY CHIDES STATES: EPA has formally declared that 42 states have failed to submit state implementation plans for the 2016 updated landfill methane rule. That, in turn, triggers a new deadline for EPA to issue a federal plan within two

years. Just six states have had plans approved, while a handful more are awaiting an EPA decision. According to EPA, seven more states say they plan to submit a plan, while seven more have said they'll just let EPA write a federal plan instead of acting on their own. (Reg. EPA-HQ-OAR-2019-0338)

RTR WATCH: EPA has finalized three more residual risk and technology reviews, or RTRs, for hazardous air pollution standards, this time for asphalt processing and asphalt roofing manufacturing (Reg. 2060-AT34); solvent extraction for vegetable oil production (Reg. 2060-AU17); and boat manufacturing and reinforced plastic composites production (Reg. 2060-AT12). In all three cases, EPA kept numerical emissions limits in place while implementing suites of minor monitoring and reporting requirements.

Around the Agencies

FERC OUTLINES NEW TRANSMISSION INCENTIVE

POLICY: FERC on Thursday opened a new rulemaking docket to reform how it sets incentives for building transmission lines. The commission's Notice of Proposed Rulemaking proposes to institute a new cost-benefit analysis for determining the return on equity given to transmission builders, and would double the basis-point ROE incentive for utilities that participate in a wholesale power market regulated by the commission. FERC Chairman Neil Chatterjee said that the new approach will move away from FERC's current "risks and challenges" framework to one that is "based upon benefits to consumers: ensuring reliability and reducing the cost of delivered power by reducing the cost of congestion." FERC first opened the transmission incentive issue with a Notice of Inquiry last March and companies will have 90 days to comment on the NOPR.

CEQ CLOSES NEPA COMMENT PERIOD AFTER NOVEL FOIA

FIGHT: A federal judge last week rejected a novel request from the Southern Environmental Law Center to stop the White House Council on Environmental Quality from advancing its proposed changes to the regulations implementing the National Environmental Policy Act. SELC sought to use an ongoing FOIA fight over documents related to the advance

notice of public rulemaking to stop CEQ from closing the comment period on its NEPA proposal on March 10. (Reg. 0331-AA03)

But Judge Glen Conrad of the U.S. District Court for Western Virginia concluded that the FOIA law does not let courts stop agencies from closing a comment period, “even if that agency has likely violated FOIA by failing to produce documents that are responsive to a timely FOIA request and that are directly relevant to the proposed rulemaking at issue.” Under pressure from the judge to deliver the documents quickly, CEQ agreed to hand over everything by May 5.

SEC — HOUSE DEMS BLAST DISCLOSURE PROPOSAL: House Financial Services Chairwoman Maxine Waters and other top Democrats last week blasted a proposed SEC rule that would require oil and gas companies to disclose payments to foreign governments, saying the measure is too weak, Pro Financial Services' Kellie Mejdrich reports. (Reg. 3235-AM06)

Pocket Docket

RFS: Refiners appear to be gearing up to ask the 10th Circuit for an *en banc* hearing of the case that voided three small refinery exemptions from the Renewable Fuel Standard. HollyFrontier and the Carl Icahn-owned Wynnewood Refining, which lost the original case, asked the court Thursday to seal their petitions for rehearing, a signal they plan to file an appeal before the March 24 deadline. Trump has gone back and forth on whether the administration should appeal.

RMP: The states challenging EPA's rollback of chemical safety requirements under the Risk Management Program have asked the court for a six-month freeze on their lawsuit so EPA can decide on their administrative petitions to reconsider the rulemaking. The states' administrative petition is based on their complaint that EPA did not account for major incidents at facilities covered by the previous RMP rules that occurred after the proposal's comment period closed in 2018, including the June 2019 Philadelphia Energy Solutions refinery disaster that released more than two tons of hydrofluoric acid. Should EPA deny their petition, that

matter could be joined with the underlying lawsuit over the rollback, the states argued. (Reg. 2050-AG95)

TSCA: A new lawsuit alleges that EPA is operating its new chemical approval program "as a black box, thwarting the ability of the public to be informed and to provide input." Under the Toxic Substances Control Act, companies must get premanufacture approval of new chemicals. But a new suit from a coalition of environmental groups argues that EPA has not been fully transparent in reviewing new chemicals. The suit alleges that EPA "routinely" misses deadlines to notify the public about new applications and fails to release studies and information supporting those applications. "The public needs this information to provide input on the potential effects of, and exposures to, new chemicals and to advocate for restrictions on the chemicals' manufacture, use, and disposal necessary to protect public health and the environment," the suit says.

— An accompanying report from Earthjustice and the Environmental Defense Fund found that of 1,700 new chemical applications approved between the law's update in 2016 and last month, EPA published notices on average 87 days late, and in around 16 percent of cases published the notice after the chemical was approved.

Interstate ozone: The D.C. Circuit has scheduled oral arguments for May 7 in New York's lawsuit challenging EPA's rejection of its petition seeking more pollution control from 350 upwind sources of air pollution. The court has not yet said whether or how that plan might change because of the coronavirus.

MATS: A federal court last week told EPA to take another look at a lingering dispute over part of the Obama administration's Mercury and Air Toxics Standard.

Valuation rule: A federal magistrate judge says that environmentalists unhappy with the Interior Department's delayed implementation of a fossil fuel royalty rule will have a file a new lawsuit if they want to challenge it. The recommendation will go to a district court judge for a final decision.

Kids' climate case: The children and young adults' request for an *en banc* rehearing of their case before the U.S. Court of Appeals for the 9th Circuit has gotten some extensive backup in recent weeks via “friend of the court” briefs from supporters urging the court to reexamine the case. Notable among them was a brief from eight Senate Democrats and 16 House Democrats who pushed back on the court's conclusion that it cannot hear the case because it cannot order the kind of serious action the plaintiffs seek. "Not only does the Court have the power to provide declaratory relief and to order [the federal government] to develop a plan to curb greenhouse gas emissions to combat climate change, the judiciary as a whole has the duty to remedy the Youth Plaintiffs' constitutional injuries despite the inappropriate politicization of climate change."

— Briefs were also filed by: former Surgeons General Richard Carmona and David Satcher; children's rights advocates; environmental groups; international organizations; justice and equality groups; a coalition of law professors; the League of Women Voters and other groups; public health and medical organizations and experts; and self-identified youth experts.

Pipelines: A federal judge has tossed out a suit from environmental groups challenging the Coast Guard's contingency plan for responding to a worst-case discharge involving ice and high winds from two Enbridge-operated oil pipelines that run across the Straits of Mackinac, which connects Lake Michigan and Lake Huron. “The Coast Guard has provided sufficient evidence that they considered the possibility of ice and high waves if a worst-case discharge were to occur,” wrote Judge Thomas Ludington of the U.S. District Court for Eastern Michigan.

Efficiency: The American Public Gas Association and the Air-Conditioning, Heating, and Refrigeration Institute have both sued the Energy Department over its January rule strengthening energy efficiency requirements for certain commercial packaged boilers, which are low pressure boilers in industrial equipment with a top capacity of 300,000 Btu per hour. The lead case is 20-1068 in the D.C. Circuit.

Metal mining: A federal judge has upheld the Trump administration's revival of metal mining leases in Minnesota that had previously been canceled by the Obama administration.

Endangered species: Conservation groups have sued the Fish and Wildlife Service for Endangered Species Act protections for wolverines, of which fewer than 300 are left in the lower 48 states. Wolverines mostly live in more northern climates but have populations in mountainous Western states, and are threatened by climate change, which reduces the snow they need for denning and reproduction. FWS in 2016 withdrew a proposal to protect wolverines, but a judge overturned that decision.

— The Center for Biological Diversity says it will sue FWS for ESA protections for eight species of skink lizards found in Puerto Rico or the U.S. Virgin Islands. (The group last fall also moved toward litigation for a separate skink species found in the Florida Keys.)

— The 10th Circuit Court of Appeals has sided with a livestock industry challenge to FWS's critical habitat designation for jaguars in parts of New Mexico and Arizona. FWS did not comply with its own rules for designating unoccupied lands as critical habitat, the court concluded.

Talk Radio

To listen to the interview with Administrator Andrew Wheeler:

<https://1210wpht.radio.com/media/audio-channel/epa-shortens-approval-process-for-disinfectants>

EPA Shortens Approval Process for Disinfectants

Dom Giordano talks with EPA Administrator Andrew Wheeler about how the private sector is helping throughout the coronavirus pandemic and talks about the disinfectants that can be used. Wheeler talks about his calls with small and large manufacturers and the goal to make sure homeowners, offices and schools have access to disinfectants such as Clorox and Lysol to fight the virus. Wheeler reveals the expanded list of disinfectants that can be used at [epa.gov](https://www.epa.gov), a list totaling over 200 products that are effective against COVID-19. Wheeler explains the approval process used to clear disinfectants for the markets and the efforts made by the EPA to shorten

the process so the manufacturers can get their products on the market. Plus, Wheeler talks about the safety of the water supply and the tests being run on the water that have shown it to be safe so far.

The Hill

Second EPA employee tests positive for coronavirus

<https://thehill.com/policy/energy-environment/488523-second-epa-employee-tests-positive-for-coronavirus>

By Rachel Frazin

A second Environmental Protection Agency (EPA) employee has tested positive for coronavirus, and another worker has come into contact with someone who tested positive.

The EPA sent an email to staff Thursday informing them that the two employees work in the New England region, which covers Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island and Vermont. A copy of the email was obtained by The Hill.

The employees were last in the office on March, 11, the email said, adding that potentially affected personnel will be directly notified as soon as possible.

The Hill first reported Wednesday that an employee at the EPA's office in Helena, Mont., tested positive for coronavirus. Three employees in the regional office also may have been exposed to the virus.

Politico has reported that an Energy Department employee based in Washington, D.C., has been diagnosed with the virus.

In recent days, the government has taken steps to try to prevent the spread of the virus to its workers.

An EPA spokesperson told The Hill in an email earlier this week that it has "authorized voluntary unscheduled leave and telework for all EPA employees across the nation" and that it is encouraging those who can work remotely to not go into the office.

The Hill:

EPA to expedite reviews of products claiming to fight coronavirus

<https://thehill.com/policy/healthcare/public-global-health/488650-epa-to-expedite-reviews-of-products-claiming-to-fight-coronavirus>

BY ALEX GANGITANO

The Environmental Protection Agency (EPA), the Consumer Brands Association (CBA) and others in the consumer packaged goods industry on Friday announced new steps for expediting reviews of products related to the coronavirus pandemic.

The move aims to ensure accurate information for the public about which products can help combat the spread of the coronavirus.

The EPA's review process will now take as little as two weeks, instead of the typical 90 days, CBA said following a call with the EPA on Friday. While no erroneous claims about products were specified on the call, the goal is that legitimate claims can be processed quickly.

"Today's calls were extremely productive and demonstrate the importance of public and private sector collaboration, not only in times of great stress, but every day," EPA Administrator Andrew Wheeler said in a statement.

"Our collaboration is critical to slowing the spread of this virus, keeping us safe and healthy. By expediting reviews - both in labeling familiar products, and by approving new products for market - we're aiding American families and communities across America," he added.

The EPA and CBA said they plan to work together to establish an accelerated process to approve supplier and manufacturing plant changes in order to prevent supply chain disruptions, prioritize and expedite product claims so that consumers know what products can prevent coronavirus and expedite the clearance process for disinfectant products made internationally.

"From disinfectants to hand sanitizers and soap, our companies are doing their best to operate at full capacity. We commend the EPA for its commitment to preventing supply chain disruptions and getting these products in the hands of Americans when they need them most," Geoff Freeman, head of the CBA, said in a statement.

The CBA also released a survey that found that 59 percent of Americans are stocking up on hand soap, 56 percent on cleaning supplies, 49 percent on hand sanitizer, and 48 percent on disinfecting wipes as of Wednesday.

Washington Examiner

EPA speeds OK of 300 coronavirus disinfectants

<https://www.washingtonexaminer.com/washington-secrets/epa-speeds-ok-of-300-coronavirus-disinfectants>

By Paul Bedard

The Environmental Protection Agency has streamlined its chemical approval process to speed up getting surface disinfectants that kill the coronavirus to market, an unprecedented action that has made some 300 products available as the crisis peaks.

“We’re doing the job. We’re getting the job done,” said EPA administrator Andrew Wheeler.

The process kicked into overdrive as the virus spread and people began scrambling for products such as bleach to clean surfaces. Wheeler said that on March 3, some 80 products were approved for use because they were known to kill pathogens stronger than the coronavirus.

The EPA has also pushed its list of approved products, such as Clorox wipes, on to its homepage. It is posted below.

In an interview today, Wheeler said that he had a long talk with industry leaders and came away confident that there are enough products available.

He said that industry officials highlighted some potential problems, such as the supply of chemicals and the trucking issues, and he pledged to take care of them so that the supply chain remains open.

Wheeler said that he told the industry representatives, “Let me know of problems, and I’ll pick up the phone” and fix it.

When he came into office, President Trump ordered his agencies to reduce regulations, and the EPA has been one of the leaders, creating a model that helped speed the approval of surface disinfectants.

And Wheeler said that the agency will use what it learned in the virus effort to steer other efforts.

Rulemaking

E&E

State AGs urge halt to 'secret science' rulemaking

<https://www.eenews.net/greenwire/stories/1062655787/search?keyword=EPA>

By Kelsey Brugger

Twenty state and city attorneys general this week objected to EPA's "secret science" rule and called on the agency to extend the public comment deadline amid the new coronavirus pandemic.

The attorneys general, from mostly blue regions, said scientists will not have time to focus on feedback about EPA's proposal, titled "Strengthening Transparency in Regulatory Science," during the rapidly evolving public health crisis.

"[A] significant extension or, alternatively, a suspension of the rulemaking process is necessary in light of the national emergency that has arisen from the COVID-19 pandemic," the state and city lawyers, led by New York Attorney General Letitia James (D), wrote in a letter to EPA yesterday.

"States, healthcare professionals, and scientists who should weigh in on the supplemental proposal will not be able to devote the time necessary to fully evaluate the supplemental proposal and its implications during this evolving crisis."

Similarly, a growing number of state organizations and public interest groups have called on the Trump administration to halt the rulemaking process.

The EPA proposal would block the agency from using scientific research to craft environmental and public health regulations where the data could not be made public because it relies on, for instance, medical records. The recent draft goes even further to include all "influential scientific information" used at the agency.

"[G]iven the scope of the supplemental proposal, and the profound effect any final rule would have on the regulatory process for all or nearly all of the statutes EPA implements and enforces, we believe that a comment period of no less than 120 days is necessary," the state and city attorneys wrote.

The attorneys general stressed that the new draft rule adds, revises and deletes definitions for key terms that could significantly affect how the rule works in practice. They also raised questions about the legal underpinning of the rule.

The attorneys general also called on EPA to consult with the National Academy of Sciences and other independent scientists. They said that NAS offered to provide input, "but there is no evidence that EPA has taken advantage of that offer."

Other critics have stressed that COVID-19, the disease caused by the coronavirus, demonstrates that the federal government needs the best possible science available quickly during a rapidly evolving public health crisis. They worry the transparency rule would, as Union of Concerned Scientists expert Michael Halpern put it, force EPA to "jump through arbitrary hoops."

"It's not just COVID-19," he wrote via email. "I think of a few years ago when a coal washing chemical was spilled into a river in West Virginia and contaminated the drinking water for 300,000 people.

"People were desperate for information, and the EPA was tight-lipped for days," Halpern continued. "There are many thousands of chemicals that are used that haven't been adequately evaluated for safety. So when one of these spills happens, do we want the EPA to be disregarding research entirely, or waiting weeks for the data to be made public, before it can determine whether the public is at risk?"

More broadly, an increasing number of groups are urging the Trump administration to pause rulemakings.

Seven state organizations, including the National Governors Association, today wrote to Trump to underscore that local and state input is a "vital component of our democratic system and provides

federal agencies with much-needed perspectives and potential impacts of federal actions."

They noted there are 700 open comment periods that will close in the next 30 days.